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Attorneys for Defendant  
IceArizona Hockey Co., LLC

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

JAMES WHITENER,  
  
Plaintiff,

vs.

ICEARIZONA HOCKEY CO., LLC,  
JOHN DOES 1-10; JANE DOES 1-  
10; ABC CORPORATIONS 1-10;  
XYZ ENTITIES 1-10; 123  
PARTNERSHIPS, 1-10,  
  
Defendants.

Case No. 2:17-cv-01881-SPL

**JOINT MOTION FOR  
APPROVAL OF SETTLEMENT  
AND FOR DISMISSAL OF THE  
LAWSUIT WITH PREJUDICE**

Defendant IceArizona Hockey Co., LLC and Plaintiff James Whitener (the “Parties”) jointly ask this Court to approve the Parties’ settlement and dismiss this action with prejudice.

**MEMORANDUM OF LAW**

Plaintiff filed this action in June 2017, alleging that he was entitled to unpaid wages under the Fair Labor Standards Act (“FLSA”). Defendant denies any wrongdoing and disputes that it owes Plaintiff any compensation or associated penalties. Defendant also believes that discovery in this case would present evidence of offsets and potential counterclaims and has set Plaintiff an evidence preservation

1 demand on such claims. However, in an effort to avoid the costs and uncertainty of  
2 litigation, the Parties have negotiated a settlement that they believe fairly compensates  
3 the Plaintiff for his claims in light of all of the circumstances. They have agreed to  
4 resolve the disputed factual and legal issues on the terms set forth in the attached  
5 Agreement. *See Exhibit 1.*<sup>1</sup>

6 As the Eleventh Circuit Court of Appeals explained in *Lynn's Food Stores, Inc.*  
7 *v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982), in the “context of suits brought  
8 directly by employees against their employer under section 216(b) to recover back  
9 wages for FLSA violations,” the parties must present any proposed settlement to the  
10 district court, which “may enter a stipulated judgment after scrutinizing the settlement  
11 for fairness.”<sup>2</sup>

12 The Parties ask this Court to find that the settlement reached in this case is fair  
13 and should be approved. Specifically, the settlement resolves a “bona fide dispute  
14 between the parties with respect to coverage or amount due under the (FLSA).” *Id.* at  
15 1353 n.8. While Plaintiff alleges unpaid overtime wages, among other defenses,  
16 Defendant contends that Plaintiff was exempt from overtime requirements of the FLSA.

17 Even if liability were established, the Parties anticipate significant disputes as to  
18 the amount of hours worked and Plaintiff’s alleged damages. For instance, Defendant  
19 contends that because Plaintiff alleges he regularly worked more than 40 hours per  
20 week, his “regular rate” for overtime purposes was considerably lower than alleged.  
21 Moreover, Defendant believes that Plaintiff’s alleged hours are significantly inflated by  
22 personal business(es) he engaged in while on Defendant’s payroll.

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23  
24 <sup>1</sup> The financial terms have been redacted from Exhibit 1 due to the confidentiality terms  
25 of the Agreement. The parties will provide that information to the Court for *in camera*  
26 review upon request.

27 <sup>2</sup> The Ninth Circuit has implicitly indicated that it would follow the Eleventh Circuit's  
28 decision in *Lynn's Food Stores*, which required judicial approval of or DOL  
involvement with a settlement agreement for the agreement to be enforceable. *Dent v.*  
*Cox Communications Las Vegas, Inc.*, 502 F.3d 1141, 1144 (9th Cir. 2007).

1 As a further indication of the fairness of the settlement, Plaintiff is represented  
 2 by experienced counsel, who, in the “adversarial context of a lawsuit,” negotiated for  
 3 Plaintiff “a reasonable compromise of disputed issues.” *Id.* at 1354. Other indicia of  
 4 fairness are also present, including that the Parties investigated the issues; that the  
 5 settlement will conserve substantial time and expense by eliminating the need for costly  
 6 discovery and a trial on the merits; and that, by settling, Plaintiff has avoided a  
 7 significant delay in receiving any possible recovery.

8 As the court recognized in *Lynn’s Foods*, settlements in the context of litigation  
 9 where there are bona fide issues in dispute, and where employees are represented by  
 10 “an attorney who can protect their rights under the statute,” are to be approved by  
 11 district courts “in order to promote the policy of encouraging settlement of litigation.”  
 12 679 F.2d 27 at 1354. These precise circumstances exist here. Accordingly, the Parties  
 13 respectfully ask the Court to approve the terms set forth in the Agreement and enter the  
 14 Parties’ proposed Judgment, thereby dismissing Plaintiff’ claims in the lawsuit with  
 15 prejudice.

### 16 Conclusion

17 For the reasons set forth above, the Parties request that the Court enter the  
 18 concurrently filed stipulated order, which approves the Parties’ settlement, and  
 19 dismisses the lawsuit with prejudice.

20 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of September 2017.

21 JACKSON LEWIS P.C.

22 By: /s/ Monica M. Ryden  
 23 Robert K. Jones  
 24 Monica M. Ryden  
 Attorneys for Defendant

25 Yen Pilch & Landeen, P.C.

26 By: /s/ Caroline A Pilch (with permission)  
 27 Caroline A. Pilch  
 28 Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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